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January 12, 1983

Mr. Barry Bush, Chief
Fire Service Training
Fire Standards and Training Commission
18 Low Avenue
Concord, New Hampshire 03301

Dear Mr. Bush:

I am writing in response to our telephone conversation on January 5, 1983. Although you did not request an opinion from our office, I thought it necessary to clarify our discussion regarding the New Hampshire law on conflict of interest for public officials.

There are no New Hampshire statutes which govern the issue of conflict of interest for public officials in general other than RSA 95, which bars public officials from buying real estate, selling or buying goods in excess of \$200, or participating in certain insurance dealings. RSA 643:2 does make it a misdemeanor for a public servant to acquire or divest himself of a pecuniary interest in any property, transaction or enterprise which may be affected by an official action or information acquired by virtue of this office, but this is not specifically a conflict of interest statute.

The law regarding conflict of interest is found, for the most part, in the common law of New Hampshire, which "identifies a conflict of interest where a potential exists for a public officer to influence the outcome of a matter in which he has a direct personal and pecuniary interest." Marsh v. Hanover, 113 N.H. 667, 672 (1973). To disqualify, "the personal pecuniary interest of the official must be immediate, definite and capable



of demonstration; not remote, uncertain, contingent, and speculative, that is, such 'that men of ordinary capacity and intelligence would not be influenced by it.' Atherton v. Concord, 109 N.H. 164, 165 (1968). The Atherton court went on to state that "if every possibility of conflict, no matter how remote, uncertain, contingent, insubstantial or speculative, were cause for disqualification, any persons who are peculiarly suited for public office by the very reason of their commercial or professional experience would be prevented from contributing their services to the community." 109 N.H. at 165-166. See also State, ex rel. Thomson v. State Board of Parole, 115 N.H. 414, 422 (1975).

I hope that this provides some clarification for our discussion on conflict of interest. The standard is a fairly general one which must be interpreted in light of the facts involved with each particular case. Please let me know if you have any questions or comments.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

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